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**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT**

**Written Testimony of Judge Gregory G. Pinski
before the Montana House of Representatives Judiciary Committee
January 29, 2015**

Chairman Bennett, Vice Chairs Court and Doane, and Members of the Committee:

Thank you for the opportunity to provide written testimony on House Bill 255, a referendum regarding disqualification of judges receiving certain campaign contributions.

In 1903, the Montana Legislature held an extraordinary special session to implement legislation curbing judicial corruption and abuse. The special session was necessary to address the conduct of two notorious and corrupt district judges in the pocket of warring belligerents during Montana's notorious Copper King era.¹ To address the issues, the Montana Legislature enacted a law allowing each adverse party the peremptory right to substitute a district judge for no reason. The law is now codified at § 3-1-804, MCA. The Legislature also enacted a process for any party to disqualify a district judge for bias or prejudice, codified at § 3-1-805, MCA. The Montana Legislature also established the Judicial Standards Commission, codified at § 3-1-1101, *et seq.*, MCA, to address judicial misconduct.

Since the end of the Copper King era, there has been no documented occurrence of actual corruption of any Montana district judge.

House Bill 255 requires an automatic recusal of any district judge or Montana Supreme Court justice receiving a campaign contribution of \$35 from any party or attorney. There are 46 district judges and seven justices. By making a \$35 contribution to each judge and justice, for \$1,855, a party or attorney could single-handedly disqualify every judicial officer in Montana. The proposed statute makes no provision for that occurrence, which would literally halt the judicial branch. The disruption to the legislative branch, for instance, if a law prohibited a legislator from voting on legislation supported or opposed by a campaign contributor is unimaginable. The same is true for the judicial branch.

More realistically, 11 of the 22 judicial districts have one district judge. In these rural judicial districts, local attorneys are the only contributors to judicial campaigns. The proposed legislation would disqualify the single district judge in most cases. This would necessitate a judicial assignment from another district. Each time this occurs, the taxpayers incur the travel

¹ See Michael P. Malone, *The Battle For Butte* 143-44 146-48 159-60 168-79 (Univ. Wash. Press 2006 ed.) (1981) (1903 "Fair Trials Law," a/k/a "Clancy Law," resulting from 1903 Special Session demanded by Amalgamated Copper Company viz. Butte judges controlled by F. Augustus Heinze)

expenses each time the judge travels to another district. For instance, to bring a judge from Sidney to Great Falls for *one hearing in one case* costs the taxpayers approximately \$412.50 in mileage, \$23 in meals, and \$71 in lodging. The costs to the taxpayers are multiplied by every appearance a substitute judge makes in a case. Besides the direct cost to the taxpayers, the lost productivity for the substitute judge is immeasurable. The substitute judge, while driving the ten hour round-trip from Sidney to Great Falls, is not resolving disputes, drafting orders, or presiding over court. The recused judge must provide a courtroom, and his or her court staff to accommodate the substitute judge, diminishing the recused judge's productivity.

Moreover, the proposed legislation will cause delay in an already overburdened judicial system. Each time recusal occurs, a new judge must be located and accept the case. Accepting an out-of-district case disrupts and delays the new judge's existing caseload due to the travel and logistical requirements above. Civil cases already take years to resolve and this legislation will exacerbate those delays.

Montana Supreme Court candidates must file a Business Disclosure Statement (Form D-1) with the Montana Commissioner of Political Practices. The Legislature is currently expanding this requirement to district judges. Judicial candidates have the same campaign reporting requirements as legislative candidates. All reports are publicly available. If an attorney or party believes a judge is biased or prejudiced by campaign activity, the attorney or party may utilize a peremptory substitution challenge under § 3-1-804, MCA, or disqualify the judge under § 3-1-805, MCA. Under the Code of Judicial Conduct, a judge is ethically bound to disqualify himself from cases in which his impartiality might reasonably be questioned. The Code of Judicial Conduct is enforced by the Judicial Standards Commission, and a party or attorney may file a complaint with the Commission.

In considering House Bill 255, the ends do not justify the means. Existing Montana law extensively protects citizens from judicial bias or prejudice. While the proposed statute seeks to protect citizens, it will cause more harm by disrupting judicial operations, delaying case resolution, and increasing taxpayer costs.

I oppose House Bill 255.